

## **Montbello FreshLo - The Hub Private Activity Bond (“PAB”) Summary**

This ordinance approves the City’s issuance of multifamily housing revenue notes, use of PAB allocation, and various agreements to provide part of the construction financing for an affordable housing project called Montbello FreshLo - The Hub. The project is anticipated to be a 6-story, 97-unit affordable multifamily housing apartment project located at 12444 E. Albrook Dr. in Denver.

The project sponsor, Montbello Organizing Committee (“MOC”) is partnering with FLO Development Services, LLC (“FLO Development”) to build the project. MOC and FLO Development will create a new entity, FreshLo LIHTC LLLP (“FreshLo LIHTC”) to be the borrower and developer for the project. The project will utilize a portion of the City’s allocation of PAB, which allows FreshLo LIHTC to access tax-exempt rates to finance the project.

The City will issue two notes for this project for a total of not to exceed \$33 million:

- Multifamily Housing Revenue Note (Montbello FreshLo – The Hub) Series 2023A in the amount not to exceed \$25.67 million.
- Multifamily Housing Revenue Taxable Note (Montbello FreshLo - The Hub) Series 2023B in the amount not to exceed \$7.33 million.

US Bank, National Association (“US Bank”) will provide note proceeds of up to \$33,000,000 to the City via the Funding Loan Agreement. The City will in turn provide these note proceeds to FreshLo LIHTC via the Borrower Loan Agreement. The note proceeds will be disbursed on a drawdown basis to coincide with periodic construction completion intervals. FreshLo LIHTC’s obligation to the City will be evidenced by Borrower Notes and a Security Instrument. FreshLo LIHTC will make loan repayments to US Bank, which is acting as the Fiscal Agent for the transaction.

The Funding Loan Agreement is a special limited obligation of the City, is not a debt of the City, and is payable solely from the pass-through note repayments received from FreshLo LIHTC.

### **Funding Loan Agreement**

Parties: City and US Bank  
Overview: US Bank makes funds available to the City so the City can then loan an identical amount of funds to FreshLo LIHTC pursuant to the Borrower Loan Agreement. The City agrees to send payments received under the Borrower Loan Agreement to US Bank.  
The City executes and delivers to US Bank its Governmental Lender Notes evidencing its obligation to make pass-through payments to US Bank.

### **Borrower Loan Agreement**

Parties: City and FreshLo LIHTC LLLP  
Overview: The City loans FreshLo LIHTC LLLP the note proceeds.  
FreshLo LIHTC, LLLP repays the City.  
CCD shall only be required to pay to US Bank pursuant to the Funding Loan Agreement what it receives from FreshLo LIHTC.  
FreshLo LIHTC is required to repay US Bank, with US Bank as the assignee of the City.  
FreshLo LIHTC executes the Borrower Notes, which are then secured by a Deed of Trust in favor of the City.

## **Tax Regulatory Agreement**

Parties:	City and FreshLo LIHTC LLLP
Overview:	Outlines the administrative duties and restrictions of the property and FreshLo LIHTC to keep the property within IRS guidelines for tax-exempt debt and tax credit projects. The Tax Regulatory Agreement also places affordability restrictions on the project.

### **Private Activity Bonds Overview:**

- Private Activity Bonds (PAB) are tax-exempt bonds issued by or on behalf of the City and County of Denver for projects that primarily benefit private entities or end users. PABs are often issued to help attract private investments into certain qualified projects that will have a public benefit, like affordable housing.
- Due to the tax-exempt nature of the bonds, the IRS limits the amount of PABs allocated year. The IRS allocates a certain amount of PAB capacity to the states based on population and, in turn, Colorado further allocates PAB capacity to local issuers like Denver.
- Through PABs, the City can borrow at tax-exempt rates for private entities to lower the borrowing costs for those entities for certain publicly-benefitting projects, but the City does not pledge its credit for these bonds. The City is merely the tax-exempt conduit bond issuer, and the underlying borrower pays the City an issuance fee.
- PABs do not count toward the City's debt capacity, and the ratings are based on the credit of the underlying borrower.
- PABs are special limited obligations payable solely from the revenues and funds pledged from the underlying borrower and the financing structure.
- The underlying borrower, not the City, is financially liable to the bond purchaser.
- In the past, the City has issued PABs for numerous affordable housing projects, including the projects at the Parkhill Village West to provide 156 affordable housing units and at 2300 Welton to provide 233 affordable housing units.
- PABs are very different types of bonds from General Obligation Bonds, which require voter approval and do count toward the City's debt capacity.